

# TEXAS BOARD OF ARCHITECTURAL EXAMINERS

## Minutes of May 15, 2014 Board Meeting

William P. Hobby Jr. Building, 333 Guadalupe Street

Tower III, Conference Room 102

Austin, TX 78701

9:00 a.m. until completion of business

### 1. Preliminary Matters

#### A. Call to Order

Chair called the meeting of the Texas Board of Architectural Examiners to order at 9:00 a.m.

#### B. Roll Call

Chuck Anastos called the roll.

#### Present

Alfred Vidaurri	Chair
Debra Dockery	Vice-Chair
Charles H. (Chuck) Anastos	Member
Sonya Odell	Member
Michael (Chad) Davis	Member
William (Davey) Edwards	Public Member

#### Excused Absent

Paula Ann Miller	Secretary/Treasurer
Bert Mijares, Jr.	Member
Chase Bearden	Public Member

#### TBAE Staff Present

Cathy Hendricks	Executive Director
Scott Gibson	General Counsel
Glenda Best	Director, Executive Administration
Glenn Garry	Communications Manager
Mary Helmcamp	Registration Manager
Christine Brister	Staff Services Officer
Ken Liles	Finance Manager
Jack Stamps	Managing Investigator
Dale Dornfeld	IT Manager
Jackie Blackmore	Examination Coordinator
Katherine Crain	Legal Assistant
Julio Martinez	Network Specialist

#### C. Determination of a quorum

A quorum was present.

#### D. Recognition of Guests

The Chair recognized the following guests: Donna Vining, Executive Director for Texas Association for Interior Design, David Lancaster, Senior Advocate for Texas Society of Architects (in at 9:12 a.m.), Nancy Fuller,

Assistant Attorney General of the Office of the Attorney General, Matt Ryan of Allensworth & Porter, Jennifer Brevorka of Law Offices of Rusty Hardin, Joel Hernandez, registered architect with PBK Architects, Jeri Morey, registered architect of Corpus Christi, Texas, and David Henners of the Texas Historical Commission, a candidate for registration.

**F. Chair's Opening Remarks**

The Chair welcomed everyone to the Board meeting. He noted that business seems to be picking up for those who work in the field of design. He stated that although that means we are all much busier, it is much better than not having enough work to make it through the next day. He expressed his appreciation to the Board members for the focus and attention brought to the meetings despite the increased work. The Board meeting package always seems to get thicker and thicker over the years but the Board always seems to get it all done each meeting.

The Chair noted he is pleased to see a shift in the Board's thought process and applying its wisdom in starting to think in terms of the bigger picture, in terms of more "Blue Sky" issues. He observed applying this thought process is hard and challenging to do as a state agency which operates on a biennium basis. He noted it is often hard to think beyond the two-year life span when the future is uncertain beyond that two-year period. The Chair noted his pleasure in seeing that the Board overcame that difficulty and has begun to engage in "Blue Sky" conversations about the future of the profession and the needs of students, interns, and registrants who will practice in that future. The Chair opined those are important and fundamental conversations that have value for the Board, its registrants and future registrants who will practice and serve on the Board beyond our time.

The Chair said his background and interest have always been in planning so he is particularly interested when the Board engages in planning - master planning and strategic planning - which he does for his clients. He said the discussions on planning remind him of a quote about the importance of planning. The Chair stated the quote is attributed to Daniel Burnham who is considered the grandfather of planning. Mr. Burnham planned the Chicago World's Fair against all odds when he was told he could never pull it off. In response, Mr. Burnham said "Make no small plans because small plans do not have the ability to stir men's hearts." The Chair stated he often revisits that quote in his practice. He said that is the challenge for this Board: to think big, dream big and plan big as well. The Chair said, with that, he would move into the substance of the meeting, beginning with the next item on the agenda which is Public Comments.

**G. Public Comments**

The Chair recognized Jeri Morey. Ms. Morey stated that she wished to comment on the agreed settlement of an enforcement case which was the

subject of deliberations at the Board's last meeting. The Respondent was an architect named Evan Taniguchi. She stated that she was troubled by this case for several reasons:

Ms. Morey commented as follows: "First of all, for many years contractors have helped architects design construction systems for our buildings. And often we believe their suggestions should be used. Although we made the drawings the ideas were the contractors'. And we did review it and we did decide it was sufficient. It seems to me that we want the architect's seal when we have reviewed it because it is only licensed engineers and architects that are required to have the knowledge for health and safety. Contractors are not licensed, so we are the ones that need to be legally responsible.

Secondly, a few years back when I made a public information request on some construction documents given permits by the City of Corpus Christi, I found some documents that did not require an architect's seal, but did require an engineer's seal, but lacked even that so I filed a complaint with the Engineer's Board. Later, staff told me that while some of those projects had not been designed by engineers all of them had been reviewed by engineers and that TBPE's staff was satisfied with the construction documents. If architects are not allowed to review documents in that manner, but engineers are, then that is potentially taking work away from us.

Thirdly, I know there is a church in Corpus Christi that did not have an architect's name on the documents, only engineers. It was built just a few years ago. It is a beautiful building capable I believe of having won a design award. But I do know that an architect was a leading member of the congregation. When I toured the building, I could not find a single violation of building codes. The priest told us that his committee had designed the building discussing almost every detail in common. The only fault I could find was in the women's restroom the stalls which were not handicapped accessible were a little too short and a bit uncomfortable and probably that happened because during construction someone realized that the maneuvering clearance for a handicap stall was not sufficient and they moved the toilet partition over so it would meet. I chose not to file a complaint on that building because I couldn't see anything else that needed improvement and I am strongly suspicious that the architect that was a member of the church had a strong role in the design of that building.

Fourthly, for many years in single-family residential design, clients have brought drawings of what they wanted to build in various stages of completion. What I did was review it, find things that must be changed, find things that would be better changed and discussed these with the

clients. But sometimes clients were stubborn and they refused to accept the optional changes. So when the discussions were done, I completed the contract documents. But, the fact that I drew it without designing 100% of it, seems to me is of little importance because I am responsible for the health and safety of all of it. So getting back to the Taniguchi case, if you want to say that a reviewing architect must study it long enough to recommend a series of changes, including optional changes and discuss them with the client, I find no fault with that. Certainly, just a quick review may not be sufficient. But, if we can't sign what we have only reviewed, it seems to be that the city and the client are losing out on a responsibility for health and safety so I would like for you to go back and rethink your policy and maybe make some changes to it."

The Chair recognized David Henners to make public comment. Mr. Henners thanked the Board for listening to his presentation. Mr. Henners stated he is originally from the United Kingdom where he is licensed as an architect by the Royal Institute of British Architects. He is an intern working toward licensure in Texas. He stated that when he moved to the United States, he learned that licensure through reciprocity was not an option which frustrated him. He said he began working for the Texas Historical Commission as an architect in October 2010 but did not enroll in the Intern Development Program until June 2013. He stated he is interested in changes to the rule requiring reporting of experience in the internship program each 6 months only. The requirement eliminated credit for most of the experience he gained before enrolling as an intern. He reported that the work he did over that 2-year period is the same work under the supervision of the same architect which now counts towards completion of his internship. If he had credit for those 2 years, he would have 3½ to 4 years of experience. He noted that the Board is considering a proposal from NCARB which would allow him credit for some the experience he gained before enrolling in the internship program. He expressed his support for the change and his hope that the Board would support the change.

The Chair asked if there were any other members of the public wishing to make a comment. No one responded. The Chair noted the public comment item on the agenda was concluded.

**The Chair stated the Board would take up Item 4 on the agenda out of order to confer with legal counsel from the Office of the Attorney General. After that, the Chair stated the Board would deliberate upon Item 9, relating to the proposed changes to the Intern Development Program reporting schedule. The Chair invited Mr. Henners to remain for that discussion if he wished.**

**4. TBAE v. Raymond Gignac, Ian Powell, Irene Nigaglioni, and Joel Hernandez Mediated Settlement Agreement (Action)**

**The Board convened in closed session at 9:15 a.m. pursuant to Section 551.071, Government Code, to confer with legal counsel regarding a proposed mediated settlement agreement of *TBAE v. Powell, Nigaglioni, and Hernandez on behalf of PBK Architects and Gignac on behalf of Gignac & Associates.***

Mr. Anastos had recused himself from participation in the case and did not attend the closed session or otherwise confer with legal counsel regarding the litigation or settlement of the case.

**The Board completed its closed session at 9:47 a.m. and reconvened in open session at 9:53 a.m.**

The Chair laid out the proposed settlement agreements before the Board. The Chair stated that at a previous meeting, Ms. Dockery, Ms. Miller and the Chair were designated as Board representatives to attend a mediation to settle the four cases arising out of a presentation made to the Corpus Christi ISD Board. The Chair reported that the Board representative met with representatives of the Respondents at a mediated settlement conference with an Administrative Law Judge on February 20, 2014. He stated the General Counsel and Ms. Fuller were present to provide legal counsel. The Chair reported it was a long day of hard work but they were able to negotiate four settlement agreements which outline specific sanctions which include administrative penalties that vary slightly for each Respondent.

A MOTION WAS MADE AND SECONDED (Dockery/Davis) TO APPROVE THE MEDIATED SETTLEMENT AGREEMENTS SUMMARIZED AS FOLLOWS IN *TBAE V. POWELL, NIGAGLIONI, AND HERNANDEZ ON BEHALF OF PBK ARCHITECTS AND GIGNAC ON BEHALF OF GIGNAC & ASSOCIATES*:

RAYMOND GIGNAC	\$17,500.00 ADMINISTRATIVE PENALTY
JAMES IAN ADAMS POWELL	\$15,000.00 ADMINISTRATIVE PENALTY
JOEL HERNANDEZ	\$10,000.00 ADMINISTRATIVE PENALTY
IRENE NIGAGLIONI	\$10,000.00 ADMINISTRATIVE PENALTY

FURTHER, THAT EACH RESPONDENT VOLUNTEERS TO COMPLETE TWO (2) HOURS OF ETHICS TRAINING ACCEPTABLE TO THE BOARD WITHIN 12 MONTHS OF THE BOARD ORDER. IN ADDITION, EACH RESPONDENT ACKNOWLEDGES THAT ANY RE-OFFENSE OR SUBSEQUENT VIOLATION INVOLVING CONDUCT AT ISSUE IN THIS CASE COULD RESULT IN AN ADMINISTRATIVE PENALTY OF \$50,000.00, SUSPENSION OF CERTIFICATE OF REGISTRATION OR REVOCATION OF CERTIFICATE OF REGISTRATION.

The Chair put the Motion before the Board for deliberation. Ms. Odell requested progress reports from agency staff at future Board meetings on whether

Respondents have completed the ethics training over the next 12 months. The Chair directed staff to note that request and make sure the report is made at future board meetings.

The Chair recognized Matt Ryan, an attorney who represents Mr. Gignac in the case. He asked for clarification regarding the agreed administrative penalty amounts. The Chair recited the amounts from the signed agreements. The Chair inquired as to whether there were any other comments, questions or conversations and stated that he was calling for the vote.

THE MOTION PASSED UNANIMOUSLY (5-0). MR. ANASTOS DID NOT VOTE.

**The Board took a break at 10:00 o'clock a.m. and reconvened at 10:08 a.m.**

The Chair directed the Board to item 9 on the agenda.

**9. Board Response to NCARB Solicitation of Input regarding Proposed Changes to NCARB Intern Development Program (IDP) (Action)**

The Chair explained to the Board that NCARB is considering an adjustment to its 6-month reporting requirement. NCARB is trying to reduce impediments to registration while maintaining the rigor for establishing qualifications for registration. NCARB sent a letter in March 2014 to 54 jurisdictions giving a 90-day comment period to allow architecture boards to provide feedback on the proposed change. The Chair stated NCARB has a reporting requirement which requires interns to report experience in 6-month blocks of time. The intent behind the requirement is to prevent reporting old experience and make the interns maintain diligence in ongoing reporting. The Chair noted the requirement poses a problem for some interns who have experience pre-dating the reporting period, as was stated in public comment earlier in the meeting. The change will allow an intern to go back 5 years to report experience for which NCARB will award 50 percent credit. The change will still require reporting in 6-month increments going forward but will allow interns a one-time opportunity to report old experience. The NCARB Board will meet in Philadelphia to consider the state boards' input and consider the change. The Chair asked if there is a motion to vote on the proposal.

A MOTION WAS MADE AND SECONDED (Davis/Anastos) TO SUPPORT THE PROPOSED CHANGE TO THE NCARB INTERNSHIP REPORTING REQUIREMENTS TO ALLOW 50 PERCENT CREDIT FOR UP TO 5 YEARS OF EXPERIENCE. The Chair called for the vote. THE MOTION PASSED UNANIMOUSLY. The Chair requested the Executive Director or the Registration Manager to report the Board's decision to NCARB.

**2. Approval of the February 13-14, 2014, Board Meeting Minutes**

The Chair put the draft minutes of the last Board meeting before the Board. A MOTION WAS MADE AND SECONDED (Edwards/Dockery) TO APPROVE THE



FEBRUARY 13-14, 2014, BOARD MEETING MINUTES. The Chair noted the list of “Blue Sky” items which were discussed at the February 13 meeting which is in the Board notebook. The list also includes actions for the implementation of each item. The Chair recognized the Executive Director who reiterated the Chair’s comments that the document is helpful and beneficial to the Board and agency staff. The Chair noted the document will be helpful in budget planning and listing priorities of the Board. The Executive Director recognized the Executive Administration Manager for creating the document.

Mr. Anastos asked about the creation of the legislative committee which appears on the list and suggested it be placed on an upcoming agenda for Board action. The Chair directed agency staff to include the creation of the committee and the expectations for the committee on the Board’s agenda for its next meeting.

The Chair asked if there were any further deliberation on the Motion. There was none. He put the Motion before the Board for a vote. THE MOTION PASSED UNANIMOUSLY.

**3. Executive Director Report – Presentation of Budget**

- A. 2<sup>nd</sup> Quarter Operating Budget
  - Enforcement Penalties and Fee Transfers to General Revenue
- B. Report on Action Items assigned at the February 2014 Board Meeting
  - I. Analysis of number of registrants paying late fees
  - II. Software application for Tablet-friendly Board Notebooks
  - III. Compare registrant trends to national data
- C. Fingerprinting update
- D. Customer Service Survey

The Executive Director requested agency managers to present the portion of the report that corresponds to each manager’s role in operations of the agency.

The Executive Director introduced the Finance Manager to outline details of the 2<sup>nd</sup> quarter Operating Budget. The Finance Manager stated that the agency’s revenue was on schedule – each month on target. He stated that the agency’s biggest months of revenue are usually June, July and August so the agency is expecting more revenue in the coming months. He noted that the revenue from Business Registration was below budget projections at the last Board meeting, but were trending upward now. He stated that the late fee payments are probably going to exceed our original projections as reported at the last meeting. The revenue item identified as “other” refers to interest income and agency charges for fulfilling public information requests. He said that expenditures such as salaries, wages, and payroll related costs were coming in below their projections. In addition, travel was coming in below projections at 58.55% for 7 months of the year. Other expenditure items, postage and printing, will exceed budgeted projections. There was an \$8,000 postage expense for mailing notice to registrants regarding the new fingerprinting requirement. The expenditure for

printing is also higher than budgeted because of a single \$5,600 charge for imaging from State Library and Archives. This is a significant charge, considering \$7,000 is the total amount budgeted for printing.

He reported a \$9,300 charge for credit card fees which exceeds the \$9,000 budgeted. This was a charge for the month of September only and is the only charge for the entire year.

He stated that the office rental expense, the Statewide Cost Allocation Plan payment and the General Revenue payment were apportioned over the year, but have not been paid yet because they are not due until August. This is intended to prevent the distortion of the amounts which are subject to expenditure at the end of the year.

The Finance Manager reported on the scholarship fund and said that the agency typically does a May disbursement in early June. He pointed out the document in the Board notebook showing the Board had paid \$12,981 in scholarships. He noted that a projection for the future of the scholarship fund is a separate item on the agenda to be discussed later.

The Finance Manager outlined the next page in the notebook relating to collections of enforcement penalties. He noted that 2013 was the last year the agency retained what it collected in enforcement penalties. He stated that in 2013 the agency collected almost \$68,000.00. To date, in 2014, the agency has collected \$65,500 – ahead of last year's collection, but the agency cannot keep the funds collected in 2014. He stated that all enforcement penalties go to the General Revenue now. Mr. Anastos asked what the reason is for the higher collections in 2014 than 2013. The General Counsel stated there is nothing in particular which might affect enforcement revenue. He speculated that it might have to do with 2013 being a legislative session year when the agency was under Sunset review. The Chair noted that there might be a trend on enforcement collection tied to legislative session years or whether it is a matter that ebbs and flows depending upon how well the economy is performing which affects the amount of activity of design professionals.

The Finance Manager outlined a series of pie charts in the Board notebook which shows roughly 2/3 of the Board's revenue gets transferred to the General Revenue fund. The agency operates on the remaining 1/3 of the revenue it collects. The Chair asked whether this is similar to the experience of other SDSI agencies. The Finance Manager responded that the experience of the other SDSI agencies is probably similar. Ms. Dockery expressed concern that although the agency is able to operate on 1/3 of the revenue, it is doing so by leaving positions unfilled, particularly in enforcement which might lead to the agency failing to fulfill its mission. She expressed interest in the agency seeking to recoup some of its expenses for enforcement in pursuing the administrative penalties which are transferred to the state, perhaps from the \$510,000 annually transferred to the General Revenue fund. Mr. Davis agreed with Ms. Dockery and observed the budget is being subsidized by reserves. He commented that if the state benefits from the administrative penalties, it is reasonable for the state to cover at least the salaries of those who work to collect those penalties. He



suggested the Board should consider seeking some legislative solution to that problem.

The Chair recognized the Executive Director to discuss the Architectural Registration Examination Financial Assistance Fund. The Executive Director outlined a document to the Board showing future fund balances based upon the imposition of a surcharge in differing amounts and the future of the fund if no surcharge were imposed. Mr. Anastos noted a general effort by NCARB and TxA and others to make registration more efficient and reasonably attainable. He suggested the Board should continue the program in that spirit. Ms. Dockery suggested the program should be expanded to the other two professions. There was discussion about the qualification for the scholarship. Mr. Davis expressed his doubt about whether it is an appropriate function of government to offer reimbursement for private individuals' examination costs. He suggested imposing only the smallest fee to keep the program going in order to comply with the statute.

The Chair directed the Board to the next item on the agenda relating to an analysis and explanation of an unexpected increase in the number of late renewals in December 2013. This was reported to the Board at the last meeting. At the Board's request, agency staff prepared a report on the likely reason for the spike in late renewals. The Executive Director outlined a document prepared by agency staff showing a monthly comparison of the number of late renewals for the first 6 months of Fiscal Years 2013 and 2014. The graph shows a higher rate in three months of the 2014 Fiscal Year. However, the average number of late renewals month-to-month has not increased. Staff determined the sudden increase is likely the result of an email sent by the agency to delinquent Respondents, providing notice that renewing registration by the end of the year would allow them to postpone fingerprinting until their next renewal date.

The Chair laid out the next item for discussion regarding the creation of Board notebooks in PDF format. The Executive Director pointed out a document in the Board notebook and stated the agency's IT Manager is available to answer questions. The document lists different software Apps for viewing meeting materials before and during Board meetings. Ms. Odell stated that she uses the iPad for Board meetings and has an application called "Good Reader." This application allows the reader to make notes, highlights and comments or create copies for editing.

The Chair moved to the next item on the agenda comparing the number of Texas registered architects to nationwide registration numbers. The Chair recognized the Communications Manager to discuss the graph. He noted that the Board requested comparison numbers for Texas registration compared to national trends. He stated that they were unable to find national trends for interior designers or landscape architects, but had numbers for the architects. Mr. Anastos asked for clarification of the number of registrants in Texas. The

Communications Manager noted the number for Texas represents the total number of Board registrants, not just architects. The national number relates only to the number of architects.

The Executive Director asked the Managing Investigator to provide an update on the fingerprinting process. The Managing Investigator explained the fingerprinting process to the Board and the policies and procedures that the agency has in place for evaluating late fees, and rejected fingerprints. He said that there are 149 individuals whose fingerprints were rejected. He explained those individuals will have a name-based fingerprint check. In addition, the agency has approved late fee removals for 78 individuals who submitted fingerprints prior to their expiration dates and who therefore should not have been assessed a late fee. He reported that 8772 registrants have been fingerprinted and 8153 have yet to be fingerprinted. Mr. Davis asked to confirm his understanding that the agency does not have access to fingerprints. The Managing Investigator confirmed that is correct. Fingerprints are not filed with the agency and agency personnel never have access to fingerprints. Mr. Davis said he asked because registrants frequently ask him about that.

The Chair recognized the Communications Manager to report on the agency's Customer Service Survey. The Communications Manager reported the survey is conducted every 2 years and this particular survey has been out in the public for 2 weeks. The agency has received 1450 responses thus far, but had received 1600 responses in 2012. The agency has received more responses than 2010. The agency has received a 93% satisfaction rating in 2010 and 2012. Now that the agency has the fingerprinting requirement in place and the test taking requirement approaching, it was anticipated that the approval rating would drop. The Communications Manager reported it did drop to 89.5% which is better than he anticipated and is still good for a state agency.

The survey includes a new section regarding fingerprinting to receive feedback on the new process and to determine the nature of any complaints. One question was "What is your least favorite part of the process?" The most-cited (almost 50% of those who have a complaint) reported a philosophic objection to giving fingerprints. The next highest amount was 19% who cited practical problems finding a location, scheduling an acceptable time, and other issues. The agency showed up in the second lowest rated complaint in which respondents stated they could not contact the agency. The Communications Manager noted it is difficult to understand how that was a problem. The survey asked how helpful the agency's communications have been. Roughly 60% heard about the fingerprinting requirement from the agency at least three times. He noted there were close to 700 respondents who wrote in comments in addition to the options that could be selected.

The Communications Manager stated the survey asked what sort of social media they use. The survey shows that LinkedIn has surged ahead as the most popular

social media tool. The survey shows agency registrants are most interested in continuing education on our Web site.

The Chair directed the Board to the section on conferences and meetings.

### **Report on Conferences and Meetings**

#### **A. NCARB Regional Summit – March 6-9, 2014**

The Chair recognized Ms. Dockery. Ms. Dockery reported that it was an excellent conference and it was great to interact with all six regions. It was good all regions heard from the NCARB national group at one time. She stated she worked with NCARB and the San Antonio AIA chapter to arrange tours and they did a great job. She recognized Tory Carlton of the local AIA chapter as doing an excellent tour of the Pearl Brewery. Ms. Dockery noted it was a very positive representation of the city and the state. The Chair said that it was the first time for all NCARB regions to meet up at one time in one place. He stated he was given the opportunity to meet with everyone and look at the Introduction of Resolutions Elections held in our region. This is the second year he served as Regional Chair. He stated that if things go well he will move to the National Board next year. He noted Board members and staff who attended the meeting.

#### **B. NCARB Region 3 Educators Conference – March 22-23, 2014**

The Chair reported on the Regional Educators-Practitioners Conference held in March at North Carolina State University in Raleigh, North Carolina. The Chair was there as a Regional Chair. The southern region holds these conferences every other year. There were deans that attended from the College of Architecture across the United States. Every State in the Southern Conference had a dean from their school. Prairie View A&M and UT-Arlington sent the dean of the architectural school and UT-San Antonio sent a director. He said that twenty-one educators and fourteen NCARB board members were there from the different states. The President of NCARB, the Secretary of NCARB and the Director of Internship all attended. There were a variety of presentations, including a presentation from Marvin Malca, a Fellow of AIA, who stated that they had a 91% percent graduation rate in their architecture school. He commented on the challenges of an architecture school at a major research institution with a strong STEM emphasis. The Chair and Dan Bennett, former Dean at Auburn, gave a joint presentation on architectural accreditation regarding developments for the next 5 years. There was a presentation of a videogame on IDP professional practice in the office featuring topics such as shop drawings and issues in the field. The Chair also reported a tour of the Hunt Library at North Carolina State was available for continuing education credit. The Chair stated the library is the most high-tech environment he has ever seen. It is a world-renown facility designed by Snøhetta Architects out of Norway. The principal owner of Snøhetta Architects is a graduate of the University of Texas. Craig Divers, a UT Austin graduate architect and broadly experienced architect, is also at the firm.

#### **C. Texas ASLA Conference – April 3-4**

The Chair recognized Mr. Davis to report on the ASLA Conference held in San Antonio, Texas. He reported that he made a presentation at the request of

the Texas chapter regarding government affairs and the Sunset process. He said that the Board's Registration Manager and Communications Manager attended. Mr. Davis reported ASLA broke a record for attendance at the conference. He thanked agency staff for sitting in on his presentation.

**The Board took a break for lunch at 11:50 a.m. and reconvened at 12:45 p.m.**

**6. Proposed Rules for Adoption (Action)**

A. Rules 1.28/3.28/5.38 prohibiting the issuance or renewal of architectural/landscape architectural/registered interior design certificate of registration to certain child support obligors.

The Chair directed the Board to item number 6 on their agenda, specifically pages 61-62. The General Counsel explained that this proposed rule implemented laws withholding licensure from individuals who are in arrears on child support. The proposed rule was published for 30 days. The agency received no public comment.

A MOTION WAS MADE AND SECONDED (Edwards/Davis) TO ADOPT PROPOSED RULES 1.28, 3.28 and 5.38. THE MOTION PASSED UNANIMOUSLY.

B. Rule 1.92 amending architectural internship requirements

The General Counsel stated the proposed amendment modifies the architectural internship requirements to implement a change by NCARB to streamline internship. The rule eliminates conditions upon work experience which limited circumstances in which mandatory experience could be obtained. The proposed amendment was published for 30 days. The agency received no public comment.

A MOTION WAS MADE AND SECONDED (Dockery/Anastos) TO ADOPT PROPOSED RULE 1.92 AMENDING ARCHITECTURAL INTERNSHIP REQUIREMENTS. THE MOTION PASSED UNANIMOUSLY.

**7. Enforcement Cases (Action)**

**Review and possibly adopt Executive Director's recommendations in the settlement of the following enforcement cases:**

**A. Registrant & Non-Registrant Cases:**

The Chair recognized General Counsel to present the following cases to the Board for their consideration and possible approval of proposed agreed settlements:

**Chase, Mike (#132-13N)**

The General Counsel stated that the Respondent hired an architect to ensure that his house could meet the City of Austin "McMansion" ordinance. Respondent removed the architect's seal from a document and affixed it to documents Respondent submitted to the City for permit. The proposed settlement includes Respondent's acceptance of responsibility and imposed an \$8,000 administrative penalty. Ms. Dockery stated the proposed penalty is inadequate to address the seriousness of Respondent's conduct. The General Counsel explained that the penalty

was derived according to the penalty matrix for a moderate offense, taking into account mitigating circumstances. Respondent was frustrated with the city for rejecting his plans a number of times. The prospective penalty imposed a \$1,000 administrative penalty per sheet. The Chair questioned the methodology for the penalty amount. The General Counsel stated that the agency has the statutory authority to impose a \$5,000.00 penalty per violation. However, this was a moderate offense since it involved a single family dwelling owned by Respondent. Mr. Edwards asked whether the architect was going to seek damages from Respondent and the General Counsel replied "not to my knowledge." The Managing Investigator stated that the architect had reported the matter to the Board. Mr. Anastos asked whether the Respondent was a home designer, homeowner or contractor. The Managing Investigator replied that Respondent was the homeowner and the architect's client. Mr. Anastos said that he does not believe the Respondent deserves a reduction in the penalty because he was frustrated with the City of Austin and believes that a penalty of \$16,000.00 would be more appropriate. Ms. Dockery asked if the architect knows about the proposed administrative penalty. The General Counsel stated he doubted she knows because the proposed administrative penalty is part of a settlement between the agency and Respondent. Ms. Dockery acknowledged the complainant's opinion is not controlling but was interested because this is a matter of great importance to all architects.

A MOTION WAS MADE AND SECONDED (Anastos/Edwards) TO INCREASE THE PROPOSED PENALTY FROM \$8,000.00 TO \$16,000.00 REPRESENTING A \$2,000.00 PENALTY PER SHEET OF ARCHITECTURAL PLANS AND SPECIFICATIONS. THE MOTION PASSED UNANIMOUSLY.

**Tyler, Lance (#056-13N)**

The General Counsel stated that this case involved essentially a title violation. Respondent's firm was advertised as having an architect on staff when it did not. The Respondent had received a previous warning for similar activities.

A MOTION WAS MADE AND SECONDED (Anastos/Dockery) TO APPROVE STAFF'S RECOMMENDATION OF THE IMPOSITION OF A PENALTY OF \$2,500.00. THE MOTION PASSED UNANIMOUSLY.

**Townsend, Phillip B. (#225-12A)**

The General Counsel explained that this case involved an architect who practiced architecture while his license was expired. The proposed penalty in the case is \$3,000.00.

A MOTION WAS MADE AND SECONDED (Anastos/Edwards) TO APPROVE STAFF'S RECOMMENDATION OF THE IMPOSITION OF A PENALTY OF \$3,000.00. THE MOTION PASSED UNANIMOUSLY.

**B. Continuing Education Cases:**

The General Counsel outlined the cases on the agenda. For continuing education cases, the Executive Director's proposed agreed orders include a standard penalty of \$700 for misstatements to the Board, \$500 for failing to complete continuing education, and \$250 for failing to timely respond to an inquiry of the Board. The Chair asked if any case had unusual facts or otherwise required particular discussion. The General Counsel stated that they all fit the same fact patterns and none required specific discussion and all proposed administrative penalties adhere to the standard matrix.

A MOTION WAS MADE AND SECONDED (Dockery/Anastos) THAT THE BOARD APPROVE THE EXECUTIVE DIRECTOR'S RECOMMENDED ADMINISTRATIVE PENALTIES IN THE PROPOSED AGREED SETTLEMENT OF THE FOLLOWING CASES INVOLVING CONTINUING EDUCATION VIOLATIONS:

Brink, Thomas C. (#106-14A)  
Bryant, Albert (#090-14A)  
DePree, E. Austin (#079-14A)  
Dierkes, David (#102-14A)  
Gereda, Julie E. (#071-14A)  
Hendricks, Philip E. (#092-14L)  
Hildinger, Douglas C. (#083-14A)  
Jackson, Heather (#084-14I)  
Jin, Rick (#067-14A)  
Johnson, Randal S. (#103-14A)  
Johnston, Courtney M. (#052-14I)  
Kelly, Donald R. (#105-14A)  
McCaffrey, Robin H. (#047-14A)  
Marcussen, Robert E. (#101-14A)  
Miller, Tracy A. (#082-14I)  
Schaumburg, Michael K. (#081-14A)  
Welter, Lane E. (#202-13A)  
THE MOTION PASSED UNANIMOUSLY.

**8. Committee Report on the Executive Director Performance Goals and the Revised Performance Evaluation (*Action*)**

The Chair recognized Ms. Odell, the Chair of the Committee, to deliver the Committee report. The Chair suggested, due to the absence of Board members, that Ms. Odell introduce the Committee, the review of the evaluation documents used each year, the information gathered and allow the Board to take action at the next Board meeting. Ms. Odell stated Mr. Davis, Ms. Dockery, and Mr. Bearden served on the Committee so there was representation of all regulated professions and a public member. She stated that they all looked to their own



professional organizations to get standards for an executive director position. They also referenced the American Society of Association Executives. The Committee's goal was to look at the review as position-specific and not person-specific with the best interest of the agency in mind. They found good resources but the Committee was not completely satisfied with what they found. The Committee began reviewing state agencies' evaluation processes. At Mr. Bearden's suggestion, the Committee focused on the Board of Pharmacy. Ms. Odell contacted the Executive Director for the Pharmacy Board and obtained a copy of the document used by that Board for the Executive Director's evaluation. The Committee found much of that document included what it had been looking for. She outlined materials in the Committee report, the process and instructions for the evaluation, including anonymous input from Board members and staff, a template for Board and staff input, and materials for employee self-evaluation. She outlined the process for scoring the evaluation. She noted the document was intended to be updated throughout the year and not completed only in anticipation of the review. Ms. Odell requested comments from the Board. Ms. Dockery stated that using a state agency other than TBAE brings validity to the proposed form. She noted that the Committee liked the proposed form because it includes an ongoing process to report activities of the agency to the Board throughout the year. She noted the form would give the Board a bigger picture of what the agency is doing. Mr. Edwards asked about an available rating of "I don't know" as an answer and whether it would affect the score. Ms. Odell noted "I don't know" should not count against the Executive Director's evaluation. It was determined such an answer should have no effect on the final score. The Chair thanked the Committee for the work the Committee has done. He asked the Executive Director if she was provided a copy of the Pharmacy Board's materials. The Executive Director stated she received it as the Board did. Much of the information prompted on the form is covered by other reports the agency currently uses to report to the Board. The proposed forms consolidate many of those reports. The Chair said the material should be shared with absent Board members, the Executive Director should have a chance to review it and Board members should provide comments and input to the Committee. The Chair proposed reconvening in August for the Board to deliberate on a document developed by the Committee with the Executive Director's input, the Board's comments, and the input of the agency's Human Resources department. Mr. Davis stated he thought the template could serve as an annual report of the Executive Director and not just an evaluation document. He thought it was a great way to put objective data in front of the reviewer. The Chair thanked Ms. Odell and the participants of the committee for their work.

**10. Resolutions for the NCARB 2014 Annual Meeting (*Action*)**

The Chair put five NCARB resolutions before the Board. He explained each member board sends a voting delegate to the NCARB annual meeting to vote on resolutions. The Chair noted he is the voting delegate of the Texas Board. He explained to the Board members that they either vote yes or no to provide direction to himself, as the Board's delegate, on how to vote on each resolution.

**2014-A – Freeze of Member Dues and Bylaw Amendment**

The Chair noted NCARB has reduced the travel budget by about half and has realized other cost savings. The Resolution would freeze member dues because there is not a need for higher dues.

A MOTION WAS MADE AND SECONDED (Anastos/Davis) TO APPROVE THE FREEZE OF MEMBER DUES AND BYLAW AMENDMENT. THE MOTION PASSED UNANIMOUSLY.

**2014-B – Incidental Bylaw Changes**

The Chair noted it is a “clean up” recommendation. It changes the names of committees, reports and makes no substantive changes. A MOTION WAS MADE AND SECONDED (Edwards/Dockery) TO APPROVE THE INCIDENTAL BYLAW CHANGES. THE MOTION PASSED UNANIMOUSLY.

**2014-C – Bylaw Change – Regional Directors**

The Chair noted that the Resolution has to do with the organizational structure of NCARB. Each NCARB Region has a governing body with a set of offices, including a Secretary, Vice Chair and Chair. The Chair stated that he serves as the Chair for Region 3 of NCARB. But there is another office above the Chair which is the Regional Director. The Regional Director sits on the National Board and is the voice of the Region at the National Board. The Resolution modifies the credentials for the Regional Director. The Resolution would require a former member of a member Board to have ended service on that Board no sooner than 1 year before nomination, to have served at least 2 years on a member Board, and, if an architect, to hold an active NCARB certificate. The crux of the change is an architect may not advance to the national leadership track without an NCARB certificate. The Chair reported that currently, there are two individuals that are Regional Directors who do not have a certificate. To avoid eliminating them from the leadership track, this requirement will not take effect until 2017. Ms. Dockery stated that she believes the 3-year implementation schedule is not adequate. She opined there are highly-qualified architects who will be eliminated from service under the implementation schedule. The Chair stated he does not agree. He supports the Resolution. He stated that the biggest problem was people getting degrees from a non-accredited school which prevents them from getting the NCARB certificate. He questioned whether any other organization would allow its national leadership to have representatives who are not members of the organization. Mr. Anastos stated he understood he must obtain the NCARB certificate in order to become registered in another jurisdiction through reciprocity. He asked if that is the case in other states. The Chair stated no. There are other states that allow people to get licensed in many ways and in order to gain reciprocity such an architect must obtain certification through the Broadly Experienced Architect program. Mr. Anastos stated he believes Regional Directors should be licensed and have a certificate, though he agrees that 3 years may be too soon. Mr. Davis stated at CLARB, as a member of a member Board, he believes he represents the policies and supports the examination without being a CLARB certificate holder. In response to a question from Mr. Anastos, he stated he believed someone who seeks a leadership position should be a member. The Chair asked Ms. Odell if the leadership of NCIDQ are all

members. Ms. Odell stated they are and she never thought it was possible to pursue leadership without being a member.

The Chair requested, as a voting delegate of the Texas Board, a sense of the will of the Board.

A MOTION WAS MADE (Anastos) TO SUPPORT THE RESOLUTION AND SUPPORT EXTENDING THE IMPLEMENTATION TO FIVE YEARS INSTEAD OF THREE. No second was made. The Motion failed for lack of a second. No further action taken. The Chair noted the Texas Board delegates would use their own best judgment on the vote.

**2014-D – Certification Guidelines Amendment – Modifications to the BEA Requirements**

The Chair stated the current requirement is that a Broadly Experienced Architect candidate for a certificate can submit evidence of work only in his or her home licensing jurisdiction. The Resolution changes the requirement so that experience outside the licensing jurisdiction would qualify for consideration under the BEA program. A MOTION WAS MADE AND SECONDED (Davis/Dockery) TO SUPPORT THE RESOLUTION TO MODIFY THE “ALTERNATIVES TO EDUCATIONAL REQUIREMENTS” IN THE *CERTIFICATION GUIDELINES*. THE MOTION PASSED UNANIMOUSLY.

**2014-E – Certification Guidelines Amendment – Modifications to the Education Requirement**

The Chair stated the Resolution would recognize a candidate’s architectural education if the program he attended was accredited within 24 months before the candidate’s graduation from the program.

A MOTION WAS MADE AND SECONDED (Davis/Anastos) TO SUPPORT THE RESOLUTION TO MODIFY THE EDUCATION REQUIREMENT. THE MOTION PASSED UNANIMOUSLY.

**11. Upcoming Board Meeting (*Information*)**

Friday, July 25, 2014 – Rules Committee

Thursday, August 21, 2014 – Full Board

**The Board took a break at 1:53 p.m. and reconvened at 2:00 p.m.**

**5. Discussion and possible action to re-implement a surcharge for funding the Architect Registration Examination Financial Assistance Fund (AREFAF) (*Action*)**

The Chair noted this issue had been introduced earlier in the meeting. The Chair asked the General Counsel to explain what the Board may do in extending a similar program to the landscape architects and the interior designers. The General Counsel stated the Board only has the statutory authority for a program for architects. Mr. Edwards asked the General Counsel if the statute states how the program is to be funded. The General Counsel stated the statute provides that the scholarship is to be funded by a surcharge on architectural registration fees based upon an amount set by the Board as adequate to fund the program.

When the fund was initially created, the Board imposed a surcharge and the balance of the fund became very large and accrued interest. The Board stopped the surcharge and interest rates have fallen. Agency staff has determined the fund is likely to be diminished to zero within the next 5 years.

Mr. Anastos stated he favors fulfilling the legislative mandate. He stated he would support a surcharge to sustain the fund but not to amass an excessive balance. He stated he would support a surcharge of \$2.50.

**A MOTION WAS MADE AND SECONDED (Anastos/Davis) TO ASSESS A \$2.50 CHARGE TO RENEW FEES TO GET MORE MONEY INTO THE FUND.**

The Executive Director requested that the above-referenced increase be effective September 1<sup>st</sup> for programming reasons. The General Counsel explained to the Board that imposing the surcharge would require an amendment to the fee schedule and the effective date for the increase would be mid-September at the earliest. Ms. Dockery suggested delegating the matter to the Rules Committee and/or Legislative Committee to review in more detail. There is adequate money to award scholarships for at least another 3 years. Mr. Davis inquired as to whether AIA provided any assistance to its members for exam costs. The Executive Director stated that she did not know, but several states provide reimbursement for internship.

**THE MOTION AND SECOND WERE WITHDRAWN.** The Chair delegated deliberation of a prospective surcharge to the Rules Committee.

The Board discussed prospective legislative changes to either expand the program to the three professions regulated by the Board or to seek a repeal of the program. The Chair also expressed the desire to appoint a Legislative Committee. The Chair stated he would like to know how the architectural profession feels about the program. He also stated he would like to hear from the leadership of all the professions on whether they favor such a program. The surcharge for smaller professions would be higher to provide a scholarship.

Mr. Davis commented upon the Board's past efforts to establish a legislative committee and noted that a professional association objected to it. He stated he would like to know what the legal authority of the Board is on having legislative positions. The Chair requested the Executive Director to establish what the parameters should be for such a committee for the Board's information at the next meeting.

## **12. Chair's Closing Remarks**

The Chair stated that the Board has come to a conclusion. He thanked the members for their service over the past two days.

## **13. Adjournment**

A MOTION WAS MADE AND SECONDED (Anastos/Odell) TO ADJOURN THE MEETING AT 2:30 P.M.

Approved by the Board:

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ALFRED VIDAURRI, JR., AIA, NCARB, AICP  
Chair, TEXAS BOARD OF ARCHITECTURAL EXAMINERS